



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

2005 SEP 28 AM 11:39

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: EPCRA-08-2005-0004

IN THE MATTER OF:

P & O COLD LOGISTICS, INC.

5787 Harold Gatty Drive

Salt Lake City, UT

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

September 28, 2005
DATE

DATE _____

7/12/20

Alfred C. Smith
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

999 18th STREET, SUITE 300
DENVER, COLORADO 80202-2466

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IN THE MATTER OF:

P & O Cold Logistics, Inc
5787 Harold Gatty Drive
Salt Lake City, Utah

Respondent

**COMBINED COMPLAINT
AND CONSENT AGREEMENT**

**Docket No. EPCRA-08-2005-0004
EPCRA Section 312, 42 U.S.C. § 11022**

United States Environmental Protection Agency, Region 8 ("EPA" or "Complainant"),
and Respondent, P & O Cold Logistics, Inc, ("Respondent"), by their undersigned
representatives, hereby consent and agree as follows:

Preliminary Statement

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement ("Consent Agreement") is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been duly authorized to institute this action.

3. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Consent Agreement, however, Respondent neither admits or denies EPA's specific factual allegations contained herein.

4. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Consent Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

5. This Consent Agreement contains all terms of the settlement agreed to by the parties.

General Allegations

6. P & O Cold Logistics, Inc ("Respondent") is a corporation registered on April 20, 2000, under the laws of the State of Utah and therefore is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

7. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and which is located at 5787 W Harold Gatty Drive, Salt Lake City, Utah.

8. On April 27, 2005, Bradley Miller and Richard Allen, authorized and properly credentialed EPA inspectors, inspected Respondent's facility in Salt Lake City, Utah.

9. Respondent consented to EPA's inspection at Respondent's facility.

10. At all times relevant to this matter, the facility had anhydrous ammonia on site, an "extremely hazardous substance" as defined in section 329(3) of EPCRA, 42 U.S.C. § 11049(3).

Alleged Violation

(Failure to submit reporting form "Tier II" for ammonia to the Utah SERC, Salt Lake City LEPC and local fire department by the March 1 deadline as required under section 312 of EPCRA)

11. Paragraphs 1 - 10 of the Preliminary Statement and General Allegations are incorporated by this reference and set out as if fully stated herein.
12. Pursuant to sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA promulgated the Hazardous Chemical Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 370. Section 312 of EPCRA, 42 U.S.C. § 11022, requires regulated parties that store or use chemicals in excess of established threshold amounts file and submit to designated state and local offices annual inventory reports (Tier IIs).
13. Anhydrous ammonia (CAS number 7664-41-7) is an extremely hazardous substance (EHS) as defined by 40 C.F.R. § 355.20.
14. Respondent, as a facility, is required to file a Tier II inventory report for extremely hazardous substances it stores in excess of established thresholds. Pursuant to 40 C.F.R. § 370.20(b), the reporting threshold for anhydrous ammonia is 500 pounds.
15. Respondent had more than 500 pounds of ammonia at the facility in reporting year 2004.
16. Respondent was required to submit an inventory report for ammonia to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department by March 1, 2005.
17. Respondent failed to file a Tier II inventory report for reporting year 2004 for ammonia stored at the facility.

18. EPA therefore alleges a violation of the requirements of reporting under Section 312 of EPCRA, 42 U.S.C. § 11022 and the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

Terms of Settlement

Civil Penalty

19. Respondent has achieved compliance with the requirements that formed the basis of the counts alleged in the Complaint.

20. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, EPA agrees that an appropriate civil penalty to settle this action is THREE THOUSAND AND THREE HUNDRED DOLLARS (\$3,300.00).

21. Respondent consents, for the purpose of settlement, to the issuance of a final consent order and payment of the civil penalty cited in the foregoing paragraph. Respondent also consents, for the purpose of settlement, to the performance of the Supplemental Environmental Project (SEP) described below. Respondent agrees to expend, at the least, from all activities and obligations associated hereto (e.g. pay such amount and perform a SEP) the sum of THIRTEEN THOUSAND TWO HUNDRED DOLLARS (\$13,200.00).

22. Respondent explicitly states and avers, subject to applicable penalties, that no payment it makes as a part of this agreement shall be used to reduce any of its tax liabilities whatsoever.

23. Within thirty days (30) of receiving a signed final consent order in this matter, Respondent shall remit a certified or cashier's check for the amount specified in paragraph 20 above. Respondent shall make its check payable to "Treasurer, United States of America," and mail it to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

The check shall reference Respondent's name and facility address, the EPA Docket Number of this action. A copy of the check shall be mailed simultaneously to the addressees listed below:

Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region VIII (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

(and)

David Cobb
U.S. EPA, Region VIII (8ENF-AT)
999 18th Street, Suite 300
Denver, Co 80202-2466

Supplemental Environmental Project ("SEP")

24. Respondent voluntarily agrees that it shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to increase the response capabilities for the Salt Lake City Hazardous Materials Response Unit. Namely, the SEP involves the purchase by Respondent of one MSA Evolution 5200 thermal camera which will be used during an incident for initial size-up and scene assessment, determining entry and ventilation points, locating spilled or leaking product, measuring amount of product in a vessel, and determining spill areas as well as locating the seat of a fire and fire extension. Furthermore, the thermal imaging camera will be made available to other local response agencies in the Salt Lake Valley as part of the current inter-department agreements.

25. Respondent shall expend at least NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900.00) on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as part of the completion report described in paragraph 28.

26. Respondent shall purchase the camera no later than sixty (60) days from the date of the final consent order in this matter unless the parties agree in writing to an extension of the completion date.

27. Respondent, by executing this Consent Agreement, certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with any state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for this SEP.

28. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of the completion of the SEP project. The SEP Completion Report shall contain, at a minimum, the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks; and
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this agreement.

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 33 below.

29. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information.

30. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by including the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

31. EPA acceptance of SEP Reports:

a. Following receipt of the SEP Completion Report described in Paragraph 28 above, EPA will do one of the following: (i) accept the SEP Completion Report; (ii) reject the SEP Completion Report with notification to Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies; or (iii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraphs 33 and 34 below.

b. If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given

pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Consent Agreement.

32. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

Stipulated Penalties and Late Fees

33. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 25 above, Respondent shall be liable for stipulated penalties as provided below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraphs 24 and 25, Respondent shall pay a stipulated penalty to the United States in the amount of nine thousand nine hundred dollars (\$9,900.00) less amounts expended in good faith to complete the SEP.
- (ii) If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money which was

required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.

- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of nine thousand nine hundred dollars (\$9,900.00), less the amount already expended.
- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.
- (v) For failure to submit a SEP Completion Report as required by paragraph 28 above, Respondent shall pay a stipulated penalty in the amount of Fifty dollars (\$50.00) for each day after the due date that the report is submitted.

34. Stipulated penalties for subparagraph 33(v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 23. Interest and late charges shall be paid as stated in paragraph 35. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

35. Interest on the civil penalty amount shall accrue from the date of the receipt of the signed final consent order at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C.

§ 3717. Interest on the stipulated penalty amount shall begin to accrue 31 days after Respondent's receipt of EPA's demand for such penalties. A late payment charge of twenty dollars (\$20.00) shall be imposed after the first thirty (30) days that the payment, or any portion thereof, is overdue, with an additional charge of ten dollars (\$10.00) imposed for each subsequent 30-day period until the payment due is made. In addition, a six percent (6%) per annum penalty shall be applied on any principal amount not paid within 90 days.

GENERAL PROVISIONS

36. Respondent waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement and knowingly agrees to waive its right to a hearing on this matter under Section 325(b)(B) of EPCRA, 42 U.S.C. § 11045(b)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

37. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

38. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

39. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

40. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

41. Any written or oral public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Emergency Planning and Community Right-to-Know Act.

42. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

43. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

44. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the alleged violations set forth in this Consent Agreement.

45. This Consent Agreement resolves Respondent's liability for Federal civil penalties under section 325 of EPCRA, 42 U.S.C. § 11045, for the alleged violations and facts contained in this Consent Agreement. This Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

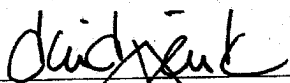
EFFECTIVE DATE

47. This Consent Agreement shall become effective upon filing with the Regional Judicial Officer:

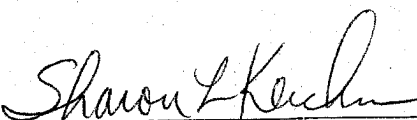
**United States Environmental Protection Agency
Region 8
Office of Enforcement, Compliance, and
Environmental Justice**

Complainant.

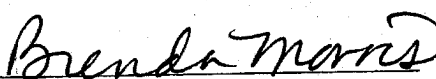
Date: 27 Sep. 2005

By: 
Michael T. Risner, Director
David J. Jank, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 9/22/05

By: 
for Martin Hestmark, Director
Technical Enforcement Program

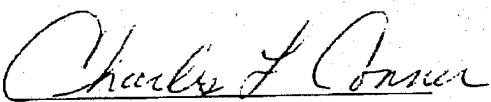
Date: 9/22/05

By: 
Brenda Morris
Enforcement Attorney
Legal Enforcement Program
Phone: (303)-312-6891
FAX: (303) 312-6953

P & O Cold Logistics, Inc

Respondent.

Date: 4/19/05

By: 
Charles Conner
Director of Engineering, P & O Cold Logistics, Inc


CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **P & O COLD LOGISTICS, INC.**, **DOCKET NO.: EPCRA-08-2005-0004** was filed with the Regional Hearing Clerk on September 28, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on September 28, 2005, to:

Charlie Conner
Director of Engineering
P & O Cold Logistics
19840 Rancho Way
Dominguez Hills, CA 90221

September 28, 2005


Tina Artemis
Regional Hearing Clerk



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